

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LINDRELL E. MALONEY,

Petitioner,

: Case No. 3:19-cv-086

- vs -

District Judge Walter H. Rice
Magistrate Judge Michael R. Merz

NORM ROBINSON, Warden,
London Correctional Institution

:

Respondent.

DECISION AND ORDER DENYING MOTION FOR DISCOVERY

This habeas corpus case is before the Court on Petitioner's Motion for Discovery of Brady Material (ECF No. 18). The Motion is captioned to be in both State and Federal Court.

Petitioner has heretofore filed a Notice of Appeals to the United States Court of Appeals for the Sixth Circuit (ECF No. 12) and his case has been docketed in that court under case No. 20-3026. The Notice of Appeal is apparently timely¹ because it was filed after Judge Rice's Order dismissing the case but before the Clerk entered judgment on December 31, 2019.

The filing of a timely and sufficient notice of appeal immediately transfers jurisdiction of all matters relating to the appeal from the district court to the court of appeals. It divests the district court of authority to proceed further with respect to such matters, except in aid of the appeal, or to correct clerical mistakes under Fed. R. Civ. P. 60(a) or Rule 36 of the Federal Rules of Criminal Procedure, or in aid of execution of a judgment that has not been superseded, until the district court

¹ Ultimate determination of timeliness must be made by the Court of Appeals.

receives the mandate of the court of appeals. 9 Moore's Federal Practice ¶ 203.11 at 3-45 and 3-46. Filing a notice of appeal divests the District Court of jurisdiction over a case and vests jurisdiction in the Circuit Court of Appeals until the district court receives the mandate of the court of appeals. *Marrese v. American Academy of Osteopathic Surgeons*, 470 U.S. 373 (1985); *Pickens v. Howes*, 549 F.3d 377, 381 (6th Cir. 2008); *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 327 (6th Cir. 1993); *Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir. 1993); *Cochran v. Birkel*, 651 F.2d 1219, 1221 (6th Cir. 1981).

The Motion for Discovery is therefore DENIED for lack of jurisdiction.

March 6, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge